

CALIFORNIA COASTAL COMMISSION

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W5a

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Hearing Date: 12/9/98
Commission Action:

STAFF REPORT: APPEAL**SUBSTANTIAL ISSUE DETERMINATION AND COASTAL PERMIT**

LOCAL GOVERNMENT: Monterey County

DECISION: Approval with conditions (see Exhibit 2)

APPEAL NO.: A-3-MCO-98-083

APPLICANT: **Highlands Inn Investors II Ltd c/o Mark Solit**

AGENT: Anthony Lombardo, Lombardo and Gilles

APPELLANTS: Terry Tydings and Barbara James; Coastal Commissioners Wan and Nava; Carl Larson (see Exhibit 5)

PROJECT LOCATION: Highlands Drive, Carmel Highlands, Carmel area of Monterey County, AP#s 241-112-012, , 241-121-003, 241-122-006, 241-122-001, 241-122-002, 241-124-002 (see Exhibit 1)

DESCRIPTION: Resubdivide 8.59 acres into nine lots; convert 143 hotel units to condominium units; allow timeshare use of the units (conditioned by the County for at least 25% of the units -- i.e., 36 -- to "remain in a transient/hotel use"); realign parking spaces and add 15 new spaces, install new underground water tanks, upgrade sewage plant from secondary to tertiary treatment; allow reclamation of portion of tertiary effluent for landscaping and irrigation, and install recycling system in on-site laundry (see Exhibits 3 and 4)

FILE DOCUMENTS: Mont. Cnty permit file (96-5376) including Draft and Final *Highlands Inn Timeshare Conversion EIR*; Mont. Cnty Local Coastal Program (incl *Carmel Area Land Use Plan* and portions of the *County Code*); 1983 *Carmel Area Land Use Plan* findings; 1988 file for approval of *Coastal Implementation Plan*; 1995 *Coastal Implementation Plan* amendment file; Title 21 of *Monterey County Code*; coastal permit file A-3-MCO-91-57 for Pebble Beach Company partial privatization proposal; summary information of other Coastal Commission actions on timeshares; Interim Ordinance 03950 temporarily prohibiting timeshare conversions; coastal permit file 3-82-227 to Highlands Inn for 38 additional units.

SUMMARY OF STAFF RECOMMENDATION

Staff recommends that the Commission determine that **a substantial issue** exists with respect to one of the grounds on which the appeal has been filed, and that the permit regarding the subdivision and conversion to timeshare units be **denied**. Fundamentally, this project will significantly and adversely impact visitor-serving accommodations in the Carmel Area. Specifically, the proposal will substantially reduce, by as much as 75%, the number of currently unrestricted visitor units available to the general public at the highly acclaimed, unique visitor-serving destination of the Highlands Inn. Located in the Carmel Highlands, the Highlands Inn affords exceptional views overlooking the southern shoreline of Point Lobos State Reserve – vistas not available elsewhere. Currently, any member of the public who can afford the daily charge for a room at the Highlands Inn can stay there if a room is available. Under this proposal, as conditioned by the County, only timeshare owners, members, or their guests would have first priority to stay in 107 of the 143 Highlands Inn units. There is little likelihood that this visitor-serving attraction could be duplicated in the coastal zone. Nor has any compensation for the loss of this public resource been proposed. This conversion would also reduce by 38% the stock of visitor-serving accommodations available to the general public in the Carmel Planning Area that was originally certified by the Commission; and set an adverse precedent for other conversions that may follow. Finally, the proposed infrastructure improvements would benefit the environment and are recommended to be approved.

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 c. Larson
6. CARMEL AREA LOCATION MAP
7. PREVIOUS TIMESHARE ORDINANCE

I. SUMMARY OF APPELLANT'S CONTENTIONS

There are three sets of appellants including Terry Tydings and Barbara James, Commissioners Wan and Nava, and Carl Larson. Together their contentions can be paraphrased and summarized under two topics: visitor-serving land uses and impacts of intensification of use:

Visitor-serving land use contentions:

- Timeshares are not an allowed use in the Carmel Area (Wan and Nava) (Larson)
- The project will reduce available public accommodations in the area; (Tydings & James) (Wan and Nava) (Larson)
- There are no low-cost facilities to be provided. (Tydings & James)

Impacts of intensification of use contentions:

- The project will result in an intensification of use beyond the equivalent of the 150 hotel unit maximum stated in the local coastal program. (Tydings & James) (Larson)
- The effects of the wastewater discharge on the marine environment are not minimized as required by the local coastal program. (Tydings & James)

- The project will not provide the number of parking spaces required by the local coastal program. (Tydings & James)

The full text of each appeal is included in Exhibit 5.

II. LOCAL GOVERNMENT ACTION

The Monterey County Board of Supervisors approved a coastal permit for the proposed project with 55 conditions on October 6, 1998 (see Exhibit 2). Previously there were local hearings held by the Carmel Highlands Advisory Committee on January 21, 1997 and May 19, 1997 (1 to 4 vote against approval), Subdivision Committee on May 29, 1997 (unanimous recommendation for approval), the Planning Commission on July 30, 1997 and August 27, 1997 (8 to 1 recommendation for approval), and the Board on December 2, 1997. The County's final action was received by the Coastal Commission on October 15, 1998 triggering an appeal period running from October 16 –29, 1998.

III. STANDARD OF REVIEW FOR APPEALS

Coastal Act section 30603 provides for the appeal of approved coastal development permits in jurisdictions with certified local coastal programs for development that is (1) between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tideline of the sea where there is no beach, whichever is the greater distance; (2) on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, or stream, or within 300 feet of the top of the seaward face of any coastal bluff; (3) in a sensitive coastal resource area; (4) for counties, not designated as the principal permitted use under the zoning ordinance or zoning district map; and (5) any action on a major public works project or energy facility. This project is appealable because subdivisions are shown as conditional uses in the VSR zone district in which the subject property is located. It is also appealable because the project was granted a variance, which is also a conditional use.

The grounds for appeal under section 30603 are limited to allegations that the development does not conform to the standards set forth in the certified local coastal program or the public access policies of the Coastal Act. Section 30625(b) of the Coastal Act requires the Commission to conduct a *de novo* coastal development permit hearing on an appealed project unless a majority of the Commission finds that "no substantial issue" is raised by such allegations. Under section 30604(b), if the Commission conducts a *de novo* hearing, the Commission must find that the proposed development is in conformity with the certified local coastal program. Section 30604(c) also requires an additional specific finding that the development is in conformity with the public access and recreation policies of Chapter Three of the Coastal Act, if the project is located between the nearest public road and the sea or the shoreline of any body of water located within the coastal zone. This project is not located between the nearest public road and the sea and thus, this additional finding need not be made in a *de novo* review in this case.

IV. STAFF RECOMMENDATION ON SUBSTANTIAL ISSUE

The staff recommends that the Commission determine that a substantial issue exists with respect to one of the grounds on which the appeal was filed (impacts to visitor-serving facilities in the area), pursuant to Coastal Act Section 30603.

MOTION: Staff recommends a “**NO**” vote on the following motion:

“I move that the Commission determine that Appeal No. A-3-MCO-98-083 raises **no** substantial issue with respect to the grounds on which the appeal has been filed.”

A majority of the Commissioners present is required to pass the motion.

V. STAFF RECOMMENDATIONS ON COASTAL PERMITS

The staff recommends that the Commission, after public hearing, take one (1) vote adopting the two-part resolution below.

A. MOTION: Staff recommends a “**YES**” vote on the following motion:

“I move that the Commission **APPROVE** coastal development permit A-3-MCO-98-83, subject to the conditions below.”

B. Staff Recommendation of Approval In Part:

Staff recommends a Yes vote and adoption of the following resolution and findings which would result in **approval** of proposed parking, water, and wastewater system improvements only, as conditioned, and **denial** of the subdivision, condominium, and timeshare conversion.

C. Resolution:

Part 1: Approval of the Parking, Water, and Wastewater Elements

The Commission hereby **grants** a permit for that portion of the proposed development involving the parking, water, and wastewater improvements, as modified by the conditions below, on the grounds that, as conditioned, those portions of the development that are approved will be in conformity with the certified Monterey County Local Coastal Program and will not have any significant adverse effects on the environment within the meaning of the California Environmental Quality Act (CEQA).

Part 2: Denial of Subdivision, Condominium, and Timeshare

The Commission hereby **denies** a permit for that portion of the proposed development involving the subdivision, condominium, and timeshare conversion on the grounds that they would not be in conformity with the provisions of the certified Monterey County Local Coastal Program.

VI. RECOMMENDED CONDITIONS

A. Standard Conditions

1. Notice of Receipt and Acknowledgment. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. Expiration. If development has not commenced, the permit will expire two years from the date this permit is reported to the Commission. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. Compliance. All development must occur in strict compliance with the proposal as set forth in the application for permit, subject to any special conditions set forth below. Any deviation from the approved plans must be reviewed and approved by the staff and may require Commission approval.
4. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
5. Inspections. The Commission staff shall be allowed to inspect the site and the project during its development, subject to 24-hour advance notice.
6. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
7. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

B. Special Conditions

1. Incorporation of Relevant County Conditions

This coastal development permit is limited to the following development: realign and add parking spaces, install new underground water tanks, upgrade the existing wastewater treatment facility from secondary to tertiary treatment; allow reclamation of a portion of the tertiary effluent for landscaping and irrigation and install a recycling system in the on-site laundry facility as shown on Exhibit 4. This approval does not include any subdivision, condominium subdivision, or conversion of any units to timeshares. This coastal permit may be issued in one or more parts corresponding to the list below. **Prior to issuance of (each part of) the coastal development permit**, final plans must be submitted and compliance with all the respective conditions listed below must be

demonstrated. Compliance will be determined by the Executive Director based on receipt of sign-offs by the appropriate County officials (generally shown in parentheses) or, if the County official does not exercise such authority, based upon receipt of acceptable submittals directly from the applicant.

a. For the **parking** improvements:

1. The parking layout shall meet the requirements of the zoning ordinance. (Public Works) (on-going; County Condition 8)
2. The applicant shall submit a parking and traffic management plan, subject to the approval of the Department of Public Works. The plan shall be submitted annually, due on October 14 of each year, and shall include methods to provide sufficient parking during events and a monitoring program. (Public Works; County Condition 10)
3. A sufficient particular group of parking spaces shall be designated for the guestrooms. (Public Works; County Condition 11)
4. The parking layout and circulation shall be reviewed by the Director of Public Works. The parking requirements shall meet the standards of Title 20 and be approved by the Director of Planning and Building Inspection. (Public Works; Planning and Building Inspection; County Condition 32)

b. For the **water** improvements:

1. Water system improvements shall incorporate appropriate backflow designs as per Title 17 of the California Code of Regulations subject to the review and approval of the Director of Environmental Health (Environmental Health; County Condition 16)

For the **wastewater** improvements:

1. Wastewater applied for landscape irrigation shall meet or exceed the requirements of "Waste Reclamation Criteria," California Code of Regulations, Title 22, Division 4, adopted September 23, 1978, or subsequently amended rules and regulations of the State Health Department. Specifically, water used for irrigation shall meet the standards of Section 60313(a), requiring adequately oxidized, coagulated, filtered, and disinfected wastewater. Reclaimed wastewater may be utilized between 50 feet and 15 feet of a residence, visitor unit or food service establishment if subsurface or drip irrigation is used. Irrigation within 15 feet of residences, shall be below grade/subsurface irrigation. (Environmental Health; County Condition 17)
2. Provide evidence to the Director of Environmental Health for review and approval that the applicant has obtained an amended Discharge Permit from the Regional Water Quality Control Board prior to reclamation of any wastewater. (Environmental Health; County Condition 18)

3. Submit a completed application and any necessary fees, and provide evidence that the proposed facility will comply with Monterey County Code 15.23. Once approved obtain and maintain a valid permit to operate a discharge facility as required per Chapter 15.23. (Environmental Health; County Condition 19)
4. Comply with Title 19 of the California Code of Regulations, Subchapter 3 and Health and Safety Code Chapter 6.95 (Hazardous Material Registration and Business Response Plans) as approved by the Director of Environmental Health. (Environmental Health; County Condition 20)
5. An application for water reclamation is required at least six months prior to discharge. The State Board and Regional Boards have entered into an agreement with Department of Health Services (DHS) to implement guidelines for recycled water use. A separate application should be submitted to DHS. County Staff will consult with DHS prior to the Board adopting water reclamation requirements. The applicant shall provide any correspondence sent to DHS regarding this project, to the State Board and Regional Board. (Central Coast Regional Water Quality Control Board; County Condition 22)
6. In accordance with Health and Safety Code Title 22, the applicant must prepare and submit an engineering report to the Executive Officer and DHS. Following our review of the report, County staff will draft water reclamation requirements governing the treatment and use of reclaimed water. (Central Coast Regional Water Quality Control Board; County Condition 23)
7. The applicant shall provide additional clarification of setbacks and proposed areas of reuse for the wastewater system. (Central Coast Regional Water Quality Control Board; County Condition 24)
8. The applicant shall comply with Chapter 18.44 of Monterey County Code pertaining to Residential, Commercial and Industrial Water Conservation Measures. (Planning and Building Inspection; County Condition 34)
9. All runoff water, which results from the irrigation of landscaping and the wash-down of decking around the pool area, shall be diverted to the wastewater treatment plant during the months of June through October, annually. During any storm event, this water shall be diverted away from the plant. All flows shall be recorded to the Regional Water Quality Control Board in the monthly reports. (Environmental Health; County Condition 53)

2. Previous Conditions

All relevant conditions of previously-issued coastal permits to the Highlands Inn remain in full force and effect.

VII. RECOMMENDED FINDINGS AND DECLARATIONS

The Commission finds and declares as follows:

A. Project Description and Location

The owners of the Highlands Inn wish to resubdivide their 8.59 acre holdings into nine lots; subdivide their 143 existing hotel units into condominium units; and allow timeshare use of these units; realign and add parking spaces; add new underground water tanks; upgrade the secondary sewage plant to tertiary treatment; allow reclamation of portion of tertiary effluent for landscaping and irrigation; and install an on-site recycling facility for laundry wastewater (see Exhibits 3 and 4). Although combined under one resolution number, the County approval has divided these proposals into four distinct projects: (1). the subdivision of land; (2). the condominium conversion of hotel units; (3) the timeshare conversion; and (4) all the infrastructure improvements.

The condominium units would be marketed as "timeshare" units. They would be sold in one week increments for 51 weeks of the year (the unit is left vacant the other week for maintenance). The County approval conditioned the project to require that "at least 25 percent of the units shall remain in a transient/hotel use and available for public use" (Condition #38). That equates to 36 units. According to the applicant, these 36 units would remain under the ownership of the hotel owner and not be converted to condominiums. This general entity would also own any portions of the timeshared rooms left unsold as well as the restaurants and other common facilities. For the 107 timeshare units, there would be a total of up to 5,457 individual owners. Any of their rooms not booked to timeshare owners, their guests, or vacation club members must be made available to the general public (Condition #39). The timeshare facility is proposed to be run by Hyatt Vacation Ownership. Timeshare owners could exchange their entitlement to stay in their Highlands Inn unit for a stay in other of the corporation's vacation facilities, through an intended affiliation with Hyatt Vacation Clubs. The reciprocal would also be true: vacation club member (i.e., those that own timeshares elsewhere would be able to do exchanges to stay at the Highlands Inn.) The permit is also conditioned on formation of a homeowners association (Condition #7). The timeshare owners would pay into a maintenance fund for their units and the common areas.

The 8.59 acre site is designated "Recreation and Visitor-Serving" in the *Carmel Area Land Use Plan* and is zoned "Visitor-Serving Commercial VSR(CZ)" in the *Coastal Implementation Plan*. The site is located in Carmel Highlands on Highlands Drive adjacent to but several feet above Highway One landward of the Pacific Ocean. Except for the adjacent 35 unit Tickle Pick Inn, the area is residential. The Inn is a luxury, world-renowned establishment. At the time of the local coastal program preparation in the early 1980's it had 105 rooms. A major expansion to the current 143 rooms was approved by the Coastal Commission in 1982 (3-82-227). That approval was conditioned on installation of a left turn lane on Highway One, establishment of a limousine/ shuttle service, and preparation of a transportation and parking study after

one-year of operation. In terms of providing an affordable component, the applicant deeded a parcel of land west of Highway One to the Big Sur Land Trust which could be used for scenic overlook purposes. Over the years, the Coastal Commission issued 15 other permits to the Highlands Inn for various improvements. Other facilities on the site include a lobby/registration area, administrative offices, two restaurants, a gift shop, event/banquet facilities, a pool, a laundry, the wastewater plant, and parking.

B. Analysis of Consistency with Local Coastal Program and Coastal Act

Appellants essentially make two general contentions: (1) that timeshares are not allowed in the Carmel Area and that this specific timeshare project will significantly impact publicly-available visitor-serving accommodations, contrary to the visitor-serving policies of the certified LCP; and (2) that the project will result in an intensification of use beyond the equivalent of the 150 hotel unit maximum stated in the local coastal program. As discussed below, part of the first contention gives rise to a substantial issue. Although the remaining contentions do not, finding at least one substantial issue means that the County approval is voided and the Commission must act on the coastal permit de novo (see following subsections 1e and 2e).

1. Timeshares and the Protection of Visitor-Serving Land Uses

a. Appellant's Contentions:

The Commissioner appellants and Carl Larson contend that timeshares are not allowed in the Carmel Area and that the project will reduce available public accommodations in the area. The Commissioner appellants explain in part:

The County approval will cause 107 of the 143 hotel units at the Highlands Inn to convert to timeshare use – a 75% reduction in the number of units available to the general public. The Highlands Inn is one of two visitor-serving facilities in the Carmel Highlands-northern Big Sur areas. Within this area is Point Lobos State Reserve and Garrapata Beach State Park. This scenic area also attracts countless tourists. The nearby Point Lobos Ranch is slated for up to 240 visitor units in the local coastal program; but that is unlikely to happen now that the property has been purchased by the Big Sur Land Trust for conveyance to the State Park system. Thus, the subject and adjacent (Tickle Pink) sites are the only sites in this area to be designated for visitor-serving uses.

...there is no mention in the *Carmel Area Land Use Plan* of “timeshare.” Timeshare uses have some characteristics of visitor-serving uses, in that they do not provide permanent housing for the purchasers of a segment of time, but also have characteristics of private residential use in that the units are, by and large, available only to that very small segment of the public who have bought into the project. Other jurisdictions that allow timeshares do so pursuant to specific coastal land use plans provisions

that allow such a use. With such provisions absent in the *Carmel Area Land Use Plan*, and given the initial context of LUP certification, the County approval is inconsistent with the land use plan...

Furthermore, policy 4.4.3.D.2 encourages retention of existing moderate-cost visitor-serving facilities. While the Highlands Inn may not be considered moderate-cost compared to all other hotels on the Monterey Peninsula, as noted it is one of only two facilities in the area and may be affordable on an occasional basis by a majority of the public. Thus, the County approval violates the intent of this policy.

Regulations for timeshares are included in the Implementation portion of the County's local coastal program. However, these are general provisions applicable to all four land use plan segments. Just because regulations for certain uses appear in Implementation, does not mean the use is allowed, if it does not otherwise appear in the Land Use Plan. Furthermore, timeshare uses are not specifically allowed in the "VSC(CZ)" zoning district.

...Within the Carmel Area there are 276 visitor units. This proposal would effectively remove 107 from the market. This is almost 38%, which is a significant percentage. The Commission in a previous action in Monterey County denied a similar privatization proposal of a lesser percentage at either the Pebble Beach Lodge (60 out of 165 units or 36%) or Spanish Bay Resort (60 out of 270 units or 22%)...Furthermore, this approval can be seen as precedential for allowing further conversions to timeshares. (see Exhibit 5b for full contention)

Appellant Larson states,

The trophy treasure Highlands Inn is a stunning unique coastal experience not available in "comparable" units elsewhere in the area. It is incomparable. For many, alternative units are not negotiable.

He cites inconsistencies with Coastal Act Public Access policies 30210, 30211, and 30212(2). He further questions whether the potential availability of timeshares to the general public when not reserved by timeshare owners will actually occur:

There can be the occasional extra facilities for the friends of guests of the current owner/member in residence; the occasional call to accommodate a colleague or customer; revisiting occasions for the owner/member during the one year of occupancy visit; the extra needs of the corporate timeshare owner/member when holding meetings; the complimentary invitation for the potential owner/member to see the potential purchase... (see Exhibit 5c for full contention)

Appellants Tydings and James contend that there are no low-cost facilities being provided.

b. Local Government Action:

The County approval findings state:

The property is designated as Visitor Serving Commercial, which allows hotels, motels, hostels, and inns. Chapter 20.64.110 of Title 20 (zoning ordinance) of the Coastal Implementation Plan state that a "timeshare project shall be permissible only in such zones and at the locations therein where a hotel, motel or similar visitor accommodation use would be permitted as an allowed use."

To maximize public use within this context, the permit was conditioned as follows:

- At least 25 percent of the units shall remain in a transient/hotel use and available for public use (the result is that approved will result in 107 of the 143 units being converted to timeshare units.) (condition # 38).
- The operation of the property as a hotel shall continue in conjunction with the timeshare ownership and units in addition to 25 percent of the units pursuant to Condition 38 which are not utilized by the individual timeshare estate owner or guest of the timeshare estate owner, shall be available as a hotel unit to the general public (#39)
- The timeshare use period shall be for minimum interval periods of up to one week and not more than twenty-nine consecutive days or eighty-nine total days per calendar year (#41)
- The restaurant, banquet and wedding facilities shall remain open to the public (#36).
- In the event the time-share project is not completed pursuant to the approved...permit, no use other than visitor serving accommodations shall be made of the property (#37).

Findings for approval cited a study that demonstrated compliance with all the items required under Section 20.64.110 to allow timeshares:

Based upon economic data provided by Stephen A. Nukes and Associates, Management strategy and economic consultants, dated May 16, 1997 currently, the total of overnight accommodations in the County of Monterey is in excess of 11,700 with the inventory of rooms on the Monterey Peninsula exceeding 9,300. On the Peninsula, occupancy levels range from 67 percent in 1991 to nearly 75 percent in 1996 with an average occupancy over that period of 69.8 percent. If 69.8 percent of the 9,300 accommodation [units] were occupied, this would leave approximately 2,809 rooms available for overnight use. If 80 percent of the Monterey Peninsula room supply were occupied, it would still leave approximately 1,860 rooms available. Ten major properties in the unincorporated area were surveyed. These ten properties in

the vicinity of the Highlands Inns, have a combined total of 949 guest rooms available. An additional 68 guest rooms are scheduled to come on line in the next two year period. Total available guest rooms will be 1,017. Assuming 80 percent utilization 180 units would be available for transient uses. It is projected that it will take at least five years to sell out the timeshares and during this time all unsold guest rooms will be available for overnight occupancy. The consultant concluded that there is ample supply of overnight accommodations to absorb any and all prospective Highlands Inn guests who may have to stay elsewhere due to the timeshare use. There are seven motels or inns within the Carmel Area Land Use plan area for a total of 269 units. To provide for ample visitor serving accommodations in the Planning Area at least 25 percent of the current units shall be made available to the traveling public and the timeshare project shall be required to be phased. It is projected that an additional 10 percent of the units would be available for overnight accommodations during non-use by timeshare owners.

The County found that, "with an average room rate of approximately \$250 per day, the Highlands Inn property does not qualify as a local accommodation serving low and most moderate income persons." The County also found the proposal consistent with *Carmel Area Land Use Plan* policy 4.4.3.I cited below.

c. Relevant Coastal Act and Local Coastal Program Provisions

The Coastal Act Public Access policies cited by one appellant are:

30210: In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

30211: Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.

30212: (a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where:

- (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources,
- (2) adequate access exists nearby,

Carmel Area Land Use Plan goals focus on preserving unique scenic resources and fragile ecosystems. The *Plan* focus is thus mainly on how new development, even visitor-serving facilities which are a priority under the Coastal Act, must be limited and not adversely impact resources. The Section 4.3.1 objective most relevant to the subject proposal states:

Existing recreational and visitor-serving facilities located within the residential communities are considered desirable uses and should be continued where potential or existing conflicts with the surrounding residential community can be adequately mitigated.

There are no *Carmel Area Land Use Plan* provisions that mention timeshares. *Carmel Area Land Use Plan* policy 4.4.3.D.2 provides:

where feasible, retention of existing moderate cost recreation and visitor serving facilities should be encouraged.

Carmel Area Land Use Plan Policy 4.4.3.D.3 requires that low to moderate cost facilities or land suitable for such use be provided where significant expansion of existing high-cost visitor-serving facilities is proposed. Section 20.146.120.B3a of the *Coastal Implementation Plan* amplifies on this requirement with a formula for determining the amount of moderate to low cost facilities that must be provided.

The site in question is designated "Recreation and Visitor Serving Commercial." The *Plan* text (4.5.C) states the uses allowed in this designation:

Moderate to high-intensity uses providing basic support services and accommodations to meet visitor needs associated with coastal recreation and travel are appropriate. Major hotel or inn accommodations are principal uses...

Land Use Plan Policy 4.4.3.I states;

Commercial land use in the Carmel Coastal segment shall be restricted to those locations of existing and proposed visitor-serving accommodations shown on the land use plan map or described text.

With regard to Implementation, the site is zoned Visitor Serving Commercial (VSC) which provides for the following land uses:

20.124.030 ALLOWABLE USES.

A. Principal Uses:

All uses specifically providing services and facilities for the traveling public including:

1. Hotels, motels, automobile courts, hostels inns.
2. Restaurants.
3. Service stations.
4. Recreational vehicle parks (North County, Big Sur, Carmel only).
5. Employee housing, accessory and supporting to a permitted use.
6. Subdivisions.
7. Lot line adjustments.
8. Campgrounds and moderate intensity recreational use, including tent platforms, cabins, parks, stables, bicycle paths, restrooms, and interpretive facilities.

B. Conditional Uses:

1. Other uses of a similar visitor-serving nature and intensity when determined by the Planning Commission to be consistent with the intent of this chapter and applicable land use plan.
2. Retail stores and offices accessory to visitor serving uses.
3. Conditional certificates of compliance.
4. Visitor-serving recreational uses and facilities for recreational activities. (North County only)

Timeshare provisions are found in Section 20.64.110 of the *Coastal Implementation Plan*:

A. Purpose: The purpose of the Section is to establish the standards, regulations and circumstances under which timesharing residential uses may be established. Further, the regulation of the Section are intended to provide for the protection of existing residential uses and neighborhoods through mandatory findings for approval and public hearing processes.

B. Applicability: A timeshare project shall be permissible only in such zones and at the locations therein where a hotel, motel or similar visitor accommodation use would be permitted. No timeshare project shall be allowed in any case wherein covenants, conditions and restrictions expressly prohibit timeshare or other transient uses.

C. A Coastal Development Permit shall be required in accordance with Chapter 20.70 for any timeshare project.

D. TRANSIENT OCCUPANCY TAX APPLICABLE. ...

E. APPLICATION FOR TIMESHARE PROJECT APPROVAL.

An applicant for approval of a proposed timeshare project shall submit a completed application on a form as prescribed by the Director of Planning and Building Inspection, in addition to any other application, information or forms that may be

necessary in the particular case as determined by the Director of Planning and Building Inspection. The application shall include:

1. Identification by name of the timesharing project and street address where the timesharing project is situated, including legal description;
2. Identification of the time periods, types of units, and number of units that are in the timeshare project. In order to facilitate orderly planned timeshare projects, the total number of timeshare units anticipated for the project shall be stated and approved although the project may be built, converted or maintained for timeshare purposes in phases convenient to the applicant;
3. A map drawn at the appropriate scale (1"=100' or as otherwise approved by the Director of Planning and Building Inspection), showing the site in relation to surrounding property, existing roads and other existing improvements (in all cases, an engineers scale shall be used);
4. A site plan for the entire anticipated project (whether or not built, converted or maintained in phases) showing proposed improvements, location of structures, vehicular ingress, and egress, landscaping, and floor plans;

F. GENERAL CONDITIONS AND FINDINGS.

The Planning Commission may approve or deny an application for a Coastal Development Permit for a timeshare project. The Commission may impose such conditions as it determines necessary to protect the public safety, health, peace and welfare. If a Coastal Development Permit is granted, the Coastal Development Permit shall be granted with a condition attached that no timeshare rights or entitlements shall be sold or offered for sale unless, at such time, there then exists a valid final subdivision public report for the sale of such timeshare rights or entitlements, issued by the Department of Real Estate of the State of California. In determining whether, and under what conditions to issue any such Coastal Development Permit, the Commission, among other things, shall consider:

1. The impact of the timesharing project on transient or permanent rental stock;
2. The impact of timesharing on present and future County services;
3. Conformity with current zoning regulations and the General Plan;
4. Conformity with existing uniform building and fire codes;
5. The sign program proposed for the project;
6. The landscaping proposed for the project;
7. Traffic circulation and parking for residents, guests, prospective purchasers and sales program personnel;

8. The applicant's description of the methods proposed to be employed to guarantee the future adequacy, stability and continuity of a satisfactory level of management and maintenance of the timeshare project.
9. The desirability of requiring an office of the managing agent or agency be located locally or on-site, as appropriate.
10. The nature and feasibility of alternative uses in case the sales program for timeshares fails.
11. Any other factors deemed relevant and any other information which the Commission or the applicant considers necessary or desirable to an appropriate and proper consideration of the application.

G. SPECIFIC CONDITIONS AND FINDINGS.

In addition to other considerations of a Coastal Development Permit for a timeshare project, the following shall apply:...

2. Hotel and Motel Conversions. In the event an existing hotel, motel, inn, or bed and breakfast facility is proposed to be converted in whole or in part to a timeshare project, the Planning Commission shall consider, in addition to the considerations in section 20.64.110(F), the following:
 - (a) the impact of the conversion on employment opportunities in the planning area of the project;
 - (b) the impact of the project on the visitor serving economy of the planning area;
 - (c) the impact of the conversion on energy, water and sewer use;
 - (d) the impact of the project on the stock of hotel and other visitor accommodations for low and moderate income persons;
 - (e) the impact of the project on the stock of hotel and other visitor accommodations for stays of less than one week within the planning area.

H. APPROVAL OF THE TIMESHARE PROJECTS.

No timeshare project shall be approved by the County unless the following findings can be made:

1. That the project is compatible with adjacent land uses and is adequately buffered by open space and/or landscaping from any less intense use.
2. That the development plan is consistent with all goals and policies of the Local Coastal Program.

3. That adequate access for high density dwellings is available or attainable through the conditions of the development.
4. That all structures, existing or proposed, meet presently established minimum structural, health, safety and fire standards.
5. That the project does not significantly adversely impact:
 - (a) water use;
 - (b) sewer use;
 - (c) energy use;
 - (d) traffic;
 - (e) police protection and other county services;
 - (f) fire protection;
 - (g) employment opportunities in the planning area;
 - (h) the visitor serving economy of the planning area;
 - (i) the stock of hotel and other visitor serving accommodations including, but not limited to, that which serves low and moderate income persons;
 - (j) the stock of hotel and other visitor accommodations for stays of less than one week within the planning area.
6. That the project will not have a significant adverse impact on the health, safety, and welfare of the general public.

d. Substantial Issue Analysis and Conclusion

Appellants contend (1) that timeshares are not permissible in the Carmel Area of the Monterey County coastal zone; and (2) that even if they were, the Highlands Inn proposal is inconsistent with Monterey County's *Coastal Implementation Plan* Section 20.64.110, which provides specific criteria for the consideration of timeshare uses. As discussed in detail below, while the Commission finds that timeshares may be considered a permissible use under the Carmel Area segment of the Monterey County Local Coastal Program, it also finds that the Highlands Inn timeshare proposal fails to meet the specific criteria of CIP Section 20.64.110 that addresses impacts to visitor-serving accommodations, and is inconsistent with the general policies of *the Carmel Area Land Use Plan*. In particular, the Highlands proposal will significantly and adversely impact visitor-serving accommodations by reducing by up to 75% the currently unrestricted *public* availability of hotel rooms at a unique and nationally-significant visitor-serving resource. In addition, this loss of visitor-serving units is a significant change to the allocation of visitor-serving uses in the Carmel Area, originally certified as consistent with Coastal Act section 30222. To reach this determination, it is important to first understand the Commission's implementation of the Coastal Act with

respect to the protection of visitor-serving uses and timeshare uses, and the specific local coastal program that governs in this case.

(1) Timeshare Conversions and the Protection of Visitor-serving Facilities

The Coastal Commission has a long history of regulating timeshare uses, particularly conversions, to protect the public availability of visitor-serving facilities along the California coast. The Coastal Act in Sections 30001.5 and 30210 establishes as state policy that "maximum access . . . and recreational opportunities shall be provided for **all** the people" [emphasis added]. Additionally, Section 30222 provides for the priority of public visitor serving uses:

The use of private lands suitable for visitor-serving commercial recreational facilities designed to enhance **public** opportunities for coastal recreation shall have priority over private residential, general residential, or general commercial development... [emphasis added].

Because hotels and motels are the major form of overnight facilities for most people, the Commission has examined closely any timeshare conversion policies or specific proposals that may effectively decrease public access to the coast by reducing the availability of overnight accommodations. As explained below, as opposed to hotels and motels, which are open to the general public on a daily basis, timeshares generally restrict access to those that have purchased a share in a particular project.

Nature of Alternatives to Conventional Hotels

Conventional overnight visitor serving facilities are owned and operated by a single entity. All rooms are available to the general public on a "first come, first served" basis. Over the last twenty years alternatives to the traditional hotel/motel model have appeared which offer financing options to developers of hotel and resort properties and new investment opportunities to that segment of the public interested in ensuring their ability to periodically visit a particular property. Two alternative methods of achieving these results have emerged. One method is the condominium-hotel approach, the other is the timeshare program.

The *condominium-hotel method* allows an individual to buy a unit in a resort or hotel development. The entire project is a condominium subdivision. The owner of the unit has an exclusive fee interest in the unit and, ordinarily an undivided interest in the public and common areas of the development. The owner of the unit may then make whatever use he or she pleases of the unit unless there are restrictions on that use in the CC&Rs. The developer of the project typically retains control over the management of the public areas, maintenance, and provides a reservation check-in service to market the rooms that the owners are not using to the general public. This method of financing spreads the financial risk of development of recreational facilities and, according to developers, encourages the development of properties that might otherwise remain vacant .

Timeshare programs also involve the sale of individual units. Unlike condominium-hotels, however, each unit is sold in usually one week increments to a number of buyers. The purchaser pays a substantial sum that entitles him or her to stay in a unit for the purchased increment forever or for a fixed number of years (in which case the property interest conveyed is essentially a leasehold). These timeshares are typically tied to a vacation club, enabling owners to swap time in their unit with another timeshare owner at another property. Public availability of the units is less certain than it is for condominium-hotels, because rental to the public has the lowest priority in this program. First priority for the units obviously goes to the timeshare owner. If the owners all decide to stay in their units for their allotted time periods, then the units would be available to only that very small segment of the public. Second priority goes to other vacation club members, who must also own timeshares somewhere. The third priority for use of the units goes to members of the general public. As with condominium-hotels, developers usually maintain that spreading the financial risk of development among timeshare participants often encourages the construction of new projects that might otherwise not be built. In this case, the capital improvements already largely exist and thus the sale of shares in this case may not encourage any additional new units at the Highlands.*

Commission Consideration of Timeshare Uses

Over the last twenty years, the Commission has reviewed a wide variety of projects and local coastal program policies concerning condominium and timeshare projects along the coast. Overall, this implementation history illustrates an on-going concern for the potentially negative impact of timeshare uses on the public availability of visitor-serving amenities in the coastal zone. Significantly, the specific context of these projects and policies has been central to the Commission's application of the visitor-serving protection policies of the Coastal Act, and its conclusions about whether a particular proposal was inconsistent with these policies. Another critical distinction in these actions is whether a proposal constitutes a net gain or loss of visitor-serving resources.

In general, when approving condominium and timeshare developments over the last ten years, the Commission has consistently maintained that these condominium-hotels or timeshares are a type of visitor-serving use, but only a quasi- or low priority one because of their essentially private character. The Commission has acted both on individual applications (where there is no certified local coastal program or on appeal), and on local coastal programs that contain regulations on these uses. In the latter situation, the Commission has certified a variety of ways to ensure that these quasi-visitor-serving uses do not preclude other more traditional public visitor accommodations and instead that they appropriately fit in the mix of various visitor-serving uses. Approaches have included not allowing them (e.g. Santa Cruz County), allowing them in only certain areas, and allowing only a percentage of visitor units to be

* This project may generate up to \$109 million in revenues (assuming a cost of \$20,000 per one week share, for 5457 shares).

timeshare or condominium hotels (e.g., Santa Cruz County LCP Amd 1-87; Encinitas, LCP Amd 2-97).

For the construction of new hotels or resorts financed in the *condominium* ownership manner the Commission has developed a consistent approach regarding public/private use of the individual units. The coastal permit is conditioned to limit owner use of the unit to no more than 25% of the time (90 days a year). Of this time, no more than two weeks can be scheduled during the summer months. The developer of the project is also required to provide a reservation service and advertise availability of the units to the general public. The Commission has approved coastal permits or local coastal program amendments for several of these types of visitor accommodations (for example, 3-95-48, Pacific Plaza Resort, Oceano; 3-90-46, Marchant, Half Moon Bay; Santa Cruz County LCP Amd. 1-87, Seascape Resort). It is important to note that all of the approved condominium-hotel projects have been for *new* construction and thus it can be found that even though 25% of the units are not available to the general public, there is a net *gain* in units represented by the 75% which are available.

A proposal to convert an existing hotel to condominium type ownership in Pismo Beach was approved with the conditions described above. This conversion was permitted because the applicant contended that the hotel was failing financially and could only be retained if condominium financing was approved. The Commission also found that, as conditioned, and because of the facts of this particular project, the conversion would not diminish its visitor serving nature (the motel had very low occupancy rates; see A-4-PSB-90-039).

Although the *timeshare* use is somewhat different than the condominium use, questions about the relative restrictions on general public availability remain. The Commission's review of such projects and local coastal program amendments to allow timeshares have thus raised similar concerns as those described in the preceding paragraphs. For example, a review of Commission action on timeshares reveals that *new projects* are approved in areas where there is already an abundance of visitor accommodations (for example, Encinitas LCP Amendment 2-97) or, as in the case of the amendment to the Orange County: Irvine Coast local coastal program (LCP Amd. 1-96), in areas where no new overnight accommodations can apparently be financed other than as timeshares. In other cases, the Commission has denied timeshare proposals because there was not an abundance of existing units (for example, Kaul, 6-81-55-A-1; Winners Circle, 6-81-112). Most of the Commission action on timeshares has related to new developments. Again, with new projects, the Commission can find that although the number of units available to the public may be substantially limited, any percentage that are available represents a net *increase* in overnight accommodations. In order to ensure that there would be some net gain, the Commission has included local coastal program provisions to require that a specific percentage shall be set aside for the general public (see, for example Encinitas LCP Amd 2-97). Finally, the Commission has certified LCPs that simply do not allow timeshare uses (e.g., the Santa Cruz County LCP).

In the case of the conversion of an existing conventional hotel/resort to timeshare, there is of course only a net *loss* of units and the issue becomes how many, if any, can be taken out of the pool of overnight accommodations available to the public in a particular area. Historically, the Commission has looked most closely at such proposals precisely because of this potential loss of existing visitor-serving uses.

As discussed in more detail in the next section, it is not clear whether the timeshare use was contemplated by the Commission when it certified the Monterey County LCP, and the subject proposal is the first such timeshare conversion in the Central Coast to be considered by the Commission (in part because few local governments in the area would even allow them). However, there was a proposal in Del Monte Forest that raised similar issues concerning the application of the Coastal Act's visitor-serving protection policies. A proposed project to convert what are publicly available tee times and hotel rooms at Pebble Beach to private membership club use, similar to the timeshare concept, was found to be clearly inconsistent with the *Del Monte Forest Land Use Plan* as well as the relevant public access and recreation policies of the Coastal Act, and was denied on appeal (see A-3-MCO-91-57).

Conclusion

The Commission has consistently raised concerns about the potential impacts of timeshare uses on visitor-serving amenities in the coastal zone. This concern, though, has always been shaped by the particular contexts at issue, including such factors as whether a project was for a new use or was a conversion of an existing use; and the particular characteristics of both an area's existing visitor-serving economy, and the specific use proposed for conversion.

(2) Timeshares in Monterey County and the Carmel Area

All governments within the Coastal Zone are required to prepare local coastal programs in order to resume primary authority for regulating development in this geographic area (Coastal Act Section 30500). All local coastal programs are subject to a certification process by the Commission before they become effective. Local coastal programs consist of land use plans and implementing ordinances. These local coastal programs, typically tailored to meet the unique situation in each locality, must, however, provide adequate protection for the coastal resources identified in Chapter 3 of the Coastal Act, including the visitor-serving uses for the public discussed earlier.

In order to ensure that coastal resources are adequately protected, the Commission's regulations applicable to local coastal programs preparation indicate that "the **kind**, location and intensity of land uses ..." must be analyzed. (California Code of Regulations 13511(a)). The Coastal Act (Section 30108.5) defines a Land Use Plan as that portion of the General Plan or coastal element which indicates the **kind**, location and intensity of land uses. Section 30523 of the Coastal Act requires that each local

coastal program be sufficiently specific to ensure that coastal resources are protected and that the requirements for content described in Section 30108.5 are met. Implementation plans must be consistent with and adequate to carry out land use plans. In summary, the Coastal Act and Regulations require that the local coastal programs identify land uses clearly enough so that their effects on coastal resources can be adequately analyzed in the Commission certification process applied to each plan. As discussed below, the need for visitor-serving facilities was specifically addressed in the certification process for the Carmel Area LCP segment, including the importance of existing resources such as the Highlands Inn. The record on the specific use of timeshares, though, is less clear.

Carmel Area Land Use Plan Development

The *Carmel Area Land Use Plan* was developed in the early 1980's. At the time most of the area under the *Plan's* jurisdiction was comprised of residential neighborhoods designated for continued residential use. The amount of potential new development in the planning area was limited due to various Coastal Act policies, as well as natural constraints. Thus, providing for visitors, which is a Coastal Act priority, proved challenging. The *Plan* responded by either placing existing visitor-serving facilities in an exclusive visitor zone (see Section 4.5.C quoted above for the allowed uses) or permitting them to remain in residential zones by policy language (see Exhibit 6). One additional area at Point Lobos Ranch was also designated for new visitor-serving accommodations. One facility, Mission Ranch, was allowed to convert to residential use. In approving the *Plan* the Commission found:

Four existing hotel sites are designated "Visitor Serving" with expansions permitted. [Carmel River Inn, Highlands Inn, Grovsenor, Lincoln Green] The Flatlands of Point Lobos Ranch is reserved for up to two hotels with a total of 240 units (4.4.3F4a). Although residential development is an option, some form of recreational use is still required (4.4.3E9). Two smaller establishments – the 4 unit Lincoln Green and the 11 unit Grovsenor Inn could conceivably convert to residential uses because they are in a residential zone. However, the higher maximum permitted visitor density is an incentive to remain commercial. The existing 26 visitor unit Mission Ranch will also be allowed to convert to residential use, but comparably priced units must be provided elsewhere in Monterey County's coastal zone...

Even if all three establishments convert and no replacement occurs within the Carmel area, 197 existing visitor-units would remain on designated visitor-serving sites within this approximately 7 mile long segment [including at that time 105 units at Highlands Inn]. An additional 90 units could be built on these sites. *Together with the permitted Point Lobos Ranch development*, sufficient visitor-serving facilities will be provided in the areas consistent with Section 30222...(emphasis added)

As noted earlier, the Highlands Inn has since expanded by 38 units. The Carmel River Inn expansion anticipated at the time of certification never occurred, although an EIR

was prepared. In addition, a *Land Use Plan* amendment has since allowed the Mission Ranch to expand to 31 units. However, most of the portion of Point Lobos Ranch designated for overnight accommodations has been purchased by the Big Sur Land Trust for conveyance to the State Parks Department. The source of funding was State money to preserve mountain lion habitat, rendering it very unlikely that the Department will seek to develop the overnight uses contemplated with the *Land Use Plan* was certified.

At bottom, certification of the Carmel Area Land Use Plan balanced various land uses within a constrained context that did not allow for extensive planning of new visitor-serving uses. Because of this, the existing visitor-serving uses, including the Highlands Inn, played a central role in enabling the Commission to find that the Carmel Area Land Use Plan was consistent with the visitor-serving policies of Coastal Act section 30222. In short, the 75% conversion of the Highlands Inn from a hotel to a timeshare is potentially a significant change to the certified allocation of visitor-serving uses in the Carmel Area.

Monterey County History Regarding Timeshares

The *Carmel Area Land Use Plan* (LUP) portion of the local coastal program was certified in 1983. The *Coastal Implementation Plan* was later prepared and became effective in 1988. Primary permit authority was returned to Monterey County at that time.

The *Implementation Plan* contains zoning designations and maps. The subject property is "Visitor-Serving Commercial." Timeshares are not specifically mentioned as permitted uses (see Section 20.124.030 quoted above).

The timeshare provisions are instead found in a general section of the *Coastal Implementation Plan* (see Section 20.64.110 quoted above). Timeshare provisions were first adopted by Monterey County in 1984 and placed in the zoning chapter of the *County Code*. Development of the *Coastal Implementation Plan* involved writing specific zoning provisions for each of the four segments as well as writing some specific coastal permit procedures. Additionally, to complete the *Coastal Implementation Plan*, existing general zoning provisions were included. These included, for example, regulations for bed and breakfast operations, senior citizen units, and timeshares. The timeshare provision stated that it applied only in certain districts, none of which were in the coastal zone at that time:

A time-share project shall be permissible only in such zones and at the locations therein where a hotel use would be permitted as hereinafter provided. Unless otherwise provided elsewhere in this zoning chapter, the zones in which such projects are permissible are the R-3, R-4, C-1, C-2, CR, PC, H-1, SC. No time-share projects shall be allowed in any case wherein covenants, conditions and restrictions expressly prohibit timeshare or other transient uses (see Exhibit 7).

A handwritten note on an earlier review copy suggests that the Coastal Commission staff asked the County whether they wanted to include any coastal zone districts, since none of the enumerated districts were in the coastal zone. There was not a formal written comment (among the more than 200 that staff made) on this subject, and the final County text retained the original language. The *Coastal Implementation Plan* was approved as submitted. The Coastal Commission staff report makes no mention of the timeshare chapter other than listing it in an attached "Table of Contents."

The general zoning provisions were revised by Monterey County in 1991 for areas outside of the coastal zone. The time share provisions were changed slightly. The mention of specific districts was eliminated. Since the revisions were for areas outside of the coastal zone, these provisions were not reviewed by the Coastal Commission.

In 1995 the *Coastal Implementation Plan* was revised. The updated versions of those portions of the *Coastal Implementation Plan* that were derived from the general regulations were included in the submittal to the Coastal Commission. Included were the 1991 timeshare revisions, noted above, prepared and approved by the County for outside the coastal zone. The only further change made was a substitution of the need to obtain a coastal permit for the need to obtain a use permit. The Coastal Commission findings for approving the *Coastal Implementation Plan* amendment (#1-95) enumerated all significant changes between the certified and the revised coastal implementation program provisions. The only change noted with regard to timeshares was that a coastal permit would now be required. The deletion of the specific district references was not mentioned.

(3) Analysis of Highlands Inn Proposal

Are Timeshares Permissible under the Carmel Area Land Use Plan?

The threshold contention of the appellants is that timeshares are not a permissible use under the *Carmel Area Land Use Plan*. As discussed above, the timeshare use is not specifically mentioned in the *Land Use Plan*. Nor is the timeshare use mentioned as a permitted use in the visitor-serving commercial zone, which is the zoning of the Highlands Inn (CIP Section 20.124.030). More generally, where the Commission has allowed timeshares, it has generally done so through the Land Use Plan, not just the zoning (e.g. Oceanside LCP). Similarly, in the previously-mentioned Pebble Beach privatization proposal in the Del Monte Forest, also in Monterey County, the Commission examined the land use plan hearing certification record and found the proposed conversion to a private membership club use inconsistent with the *Del Monte Forest Land Use Plan*.

It also appears that the timeshare language in the original *Coastal Implementation Plan* would preclude timeshares in the Carmel Area because none of the districts mentioned as allowing timeshares existed in the coastal zone. (Similar districts existed but with new names.) There are other examples of the County including provisions in its

Implementation Plan that would not be in effect. For example, the County placed an Agricultural Industrial zoning district in its *Implementation Plan* years before there were any areas so zoned. The County indicated that they wanted the regulations in place in case any areas were so designated in the future. Another example includes regulations for Airport Approaches zoning amended into the *Coastal Implementation Plan* in 1995. Again, there are no such zones in the unincorporated County's coastal zone at this time.

While these arguments are somewhat persuasive, other actions that the Commission has taken would give the County the benefit of the doubt. Foremost, the Commission did certify the timeshare language in the *Coastal Implementation Plan*, without any specific findings saying that it was inoperable. Zoning regulations typically offer more detail than land use plans. The 1995 amendment removed the caveat limiting the ordinance to the obsolete zoning districts. The Commission certified the amended language requiring a coastal permit. In addition, the land use plan and zoning district language is broad enough to encompass a variety of visitor-serving uses, including timeshares, without specifically mentioning them. As discussed above, the Commission generally has maintained that "timeshares" are a type of visitor-serving use, albeit a less public type. Moreover, in a recent local coastal program amendment for Encinitas, the Commission found a zoning-only change sufficient to allow for timeshares. Finally, Commission staff has informed the County during its deliberations on this project that the above cited Code Section 20.64.110 is operative. In sum, although the question of whether timeshares are permitted in the Carmel Area has never been explicitly addressed by the Commission, the weight of the evidence supports a finding of no substantial issue on this threshold claim.

Does the Highlands Proposal Meet the Criteria for Timeshare Conversion?

Having found that the *Implementation Plan's* operational language is sufficient to allow for a timeshare application to be considered in the Carmel Area, the Commission must consider whether the Highlands Inn proposal raises a substantial issue with respect to its consistency with the policies of the Carmel Area Land Use Plan and the specific tests of CIP Section 20.64.110. As discussed below, the evidence available for this particular proposal supports a finding of substantial issue. Specifically, the stock of available visitor accommodations is unacceptably reduced, inconsistent with the goals of the *Carmel Area Land Use Plan* and CIP section 20.64.110(j).

The Highlands Inn Visitor-Serving Resource: To evaluate the consistency of the County's approval of the Highlands Inn timeshare proposal, it is important to understand the specific significance of the Highlands Inn for visitor-serving amenities in the Carmel Area. At the County level, this was not thoroughly considered. Rather, the applicants prepared a study on the impacts of the proposed conversion that used the entire Monterey Peninsula (including Carmel Valley and Big Sur) as the "planning area." Finding some 9,000 other rooms available in this larger area, the applicants' consultants concluded that the effect of the Highlands Inn timeshare conversion would be

insignificant. Fairbank, Maslin, Maullin & Associates also surveyed patrons of the Highlands Inn who indicated other establishments that they would stay in on the Monterey Peninsula if Highlands Inn were no longer available ("Highlands Inn Recent Guest Survey," August 1996). The consultants concluded that former patrons would still return to the general area if the Highlands Inn was unavailable. The survey did not ask patrons if they had an opinion on the proposed conversion to timeshare or if they considered these other locations to be an equivalent recreational experience.

It is true that the original background reports to the Monterey County local coastal program used the larger area of the Monterey Peninsula as one factor in considering the adequacy of visitor-serving uses in the Carmel Area. However, as discussed earlier, the certification of the Carmel Area LUP as meeting the visitor-serving policies of the Coastal Act was premised primarily on the existence of certain visitor-serving uses in the Carmel Area, including the Highlands Inn. Essentially, the Commission treated the much larger pool of surrounding visitor-serving on the Peninsula and up Carmel Valley as a "mitigating" factor for finding that there was adequate visitor-serving within the specific, already constrained, planning area. This did not mean that the loss of or removal of the existing resources within the planning area was appropriate. Indeed, at the time of certification, the Commission anticipated that there would be an additional 240 units at Point Lobos – units which are now unlikely to occur.

The significance of the proposed diminution of Highlands Inn availability thus should not be evaluated within the broad Monterey Peninsula setting. Rather, as it has done in previous Commission reviews of timeshare proposals, the Commission must examine the more localized Carmel Highlands context, and the unique setting and character of the Highlands Inn itself, to evaluate the impact of the Highlands Inn timeshare proposal.

More specifically, the Monterey Peninsula is much more than just the forest-mantled headland that juts forward to define the southern limit of Monterey Bay. In modern usage it refers to an extremely varied collection of distinct communities within an approximate 10 mile radius of the old Spanish capitol at Monterey. Each of these communities has its own special character which, in a number of cases, makes it a visitor destination of statewide or greater significance. Some are within incorporated municipalities, some are not. Well known examples include the village of Carmel-by-the-Sea, Old Monterey, Pebble Beach, Cannery Row, and the Pacific Grove Retreat district.

The Carmel Area comprises the unincorporated coastal zone area south of Pebble Beach and north of the Big Sur Coast; thus, encircling incorporated Carmel-by-the-Sea. The Carmel Area serves as a gateway to the Big Sur coast. Included within is Carmel Highlands, another distinct community, best known for two nationally-recognized features: Highlands Inn and Point Lobos State Reserve, which marks the northern edge of the largely residential community. Like the village of Carmel-by-the-Sea several miles to the north, the Highlands was settled by a variety of artists and creative individualists who appreciated the area's rugged scenic beauty. Like Pebble Beach, it features many beautiful homes on spacious lots facing the sea. As in both its

neighbors, a continuous mantle of native Monterey pine forest has been maintained and even extended. In contrast to its neighboring communities, Carmel Highlands straddles the Big Sur Coast Highway. It is the last developed gateway to the spectacular Big Sur coast, providing the last southbound opportunity for gasoline, sundries and overnight (inn) accommodations for the next 24 miles.

Aside from its function of providing overnight accommodations for Big Sur Coast visitors, though, the Highlands Inn is a highly acclaimed destination in its own right and the opportunity to stay in it should not be diminished. Stair-stepping up the granite cliffs and through the native pine forest high above Highway 1, its public spaces offer exceptional views looking over the southern shoreline of Pt. Lobos State Reserve – vistas not available elsewhere. These highly scenic outdoor views are complemented by indoor displays spotlighting the landscape photography of Carmel Highlands residents – which have included Ansel Adams and the Westons.

The following quote from the Highlands Inn's website perhaps best sums up its special attributes and amenities:

The Highlands Inn welcomes those seeking to experience the adventure, recreation, and romance of the dramatic Monterey Peninsula. Just south of Carmel at the Gateway to Big Sur, the landscape has been formed by nature's hand. Hillsides are strewn with wildflowers, and black tidal rocks form dramatic settings with the Pacific as a backdrop. Here, nestled among towering Monterey pines, is Highlands Inn. Commanding one of the world's most stunning displays of natural beauty, Highlands Inn has been world famous since 1916. A multi-million dollar renovation has restored and enhanced its rustic charm. Bleached oak flooring, custom wool rugs, continuous skylights, and the original granite fireplaces all combine to create an atmosphere of casual elegance. It's the perfect choice for a romantic weekend or a corporate retreat. Award-winning Pacific's Edge restaurant, with spectacular 180 degree views of the rugged Pacific coastline, serves contemporary regional cuisine and offers an award-winning wine list. Delightful, deli-style California Market offers al fresco dining, plus Lobos Lounge and Sunset Lounge for cocktails, entertaining and conversation. Valet parking, concierge service, room service, and a host of pampering room amenities. Year-round heated outdoor pool, three outdoor ocean view hot tubs, complimentary mountain bikes, and nature trails for jogging and hiking. The Highlands Inn is a member of the Small Luxury Hotels of the World, a unique collection of finely appointed, individually owned hotels dedicated to maintaining an exceptionally high standard of service. Each property is distinguished by its intimate size and is committed to providing outstanding accommodation, cuisine, decor, and amenities. The hotel has been awarded the Wine Spectator "Grand Award" Wine List. Guests enjoy unparalleled design excellence at the Highlands Inn, which was awarded first place awards by the American Society of Interior Designers, The American Institute of Architecture, and the General Electric Company.

Overall, the appropriate framework within which to evaluate the consistency of the Highlands Inn timeshare is one that recognizes the unique significance of the Highlands Inn as a specific, highly valuable, coastal resource, within the context of the Carmel Area Land Use Plan.

Significance of the County Approval: As noted previously, the County conditioned the Highlands project to lessen the scope of the timeshare conversion, limiting it to no more than 75%, or 107, of the units. (According to the applicant, the other 36 units would remain under the ownership of the hotel owner and not be converted to condominiums, although the permit conditions do not directly state this). Furthermore, with respect to continuing availability of some visitor use, the County record indicates that up to 18% of timeshares are typically available to the general public, an industrywide figure derived from a combination of unsold units and owners deciding not to use their units. While there is no evidence to suggest a different experience for Highlands Inn or that the owners of Highlands Inn would not always aggressively market vacant units, there is no guaranteeing this 18%. The Highlands Inn is a unique, world famous resort and thus industry averages may not apply. An argument could certainly be made that because of its year-round popularity (unlike a ski resort, for example), the number of units available to the general public may be substantially less than the industry average. In addition, although it is difficult to predict whether the other types of uses (e.g., by friends, colleagues, meeting goers, prospective purchasers) that appellant Larson alleges may actually occur, the potential for such or similar occurrences can not be ruled out. Nevertheless, even if they do not occur and if non-owner marketing is maximized, the best case that can be made for the Highlands conversion proposal is that more than one-half of the units will disappear from the unrestricted visitor pool (100% - 25% non-timeshare - 18% not used by timeshare owners = 57% no longer available). The worst case is that three quarters of the units will disappear from the unrestricted visitor pool.

The question is, therefore, what are the implications of this change in status for more than half of the Highlands Inn rooms, in terms of impacts to the visitor-serving uses? Currently, any party who can afford a one night or longer stay at the Highlands Inn can stay there if a unit (out of 143 units) is available. This is not everyone, as obviously some potential visitors will not be able to afford the quoted daily rates of \$265 to \$350 for a deluxe room. Nevertheless, the Commission agrees with the appellants that this might be affordable to moderate income persons for special occasions.

Under the County-approved proposal, this situation ceases to exist. First priority (for 107 of the units) goes to timeshare owners of the Highlands Inn who have paid thousands of dollars for a week share (a maximum of 5457 owners). * Second priority goes to other timeshare owners within the same timeshare network. Although there are over a million members worldwide in the Hyatt network which Highlands Inn plans to affiliate with, this universe is a very small percentage of the total vacationing population.

* The applicant estimates that shares will be sold in the \$18,000-\$20,000 range.

To join this universe one must be able to afford to purchase a timeshare unit (generally costing between \$10,000 and \$20,000) and to have made such a commitment of resources. Obviously, the number of people who could afford such a purchase is vastly less than the number who could afford a one-night stay. And, the number of people who would desire and be able to make such a long-term vacation expenditure commitment is even further limited.

Because of these substantial restrictions on public availability that the timeshare arrangement would put in place, the Commission concurs with the appellants that the diminished availability of 75% of the unique Highlands Inn units is a significant impact. This significance is furthered by the extreme unlikelyhood of any other hotels being built in the vicinity. To the north, Point Lobos Ranch, where the only new hotels in the Carmel Area were allowed, has been largely purchased for mountain lion habitat. To the south, the *Big Sur Coast Land Use Plan* has provisions for only one 24 unit hotel, north of Big Sur Village, which is approximately 20 miles south of Highlands Inn. As noted above, other additional hotel opportunities in both Big Sur and the Carmel Area are very limited. This is not to suggest that any new offsetting hotel construction in the area would render the loss of availability of the Highlands Inn to timeshares acceptable. Moreover, the loss of the Highlands experience certainly could not be compensated for by directing the public to other hotels in Monterey County, as is suggested by the applicant's survey. While the Commission recognized that the Monterey Peninsula could satisfy some of the future visitor demand for overnight accommodations so that they would not have to be sited in fragile part of the Carmel Area, the Commission did not intend to have this area substitute for existing facilities in the Carmel Area when it certified the *Land Use Plan*.

In addition to there being little prospect of compensating for the loss that the proposal represents (assuming it could be found appropriate), the appellants are also correct in being concerned that the County approval with its findings would set an adverse precedent. Monterey County has established a temporary moratorium on any further conversions to timeshares until it has an opportunity to further study and consider possible amendments to County ordinances and regulations addressing issues implicated in such time-share conversions. However, the moratorium expires on December 9, 1998 and no amendment is yet forthcoming (the moratorium may be extended). According to the certified *EIR* (p. 3-7), none of the other visitor-serving facilities in the Carmel Area except the Mission Ranch have large enough sized rooms and the necessary amenities required for a successful timeshare project. It also states that none have enough units to create an economically viable timeshare project. However, the Commission has reviewed and approved smaller timeshare projects. There would be no apparent way to distinguish Tickle Pink if it too decided to apply for a conversion to timeshare once Highlands Inn were approved.

Finally, in addition to the significance question, Section 20.124.030H requires a finding of consistency with all the goals and policies of the local coastal program. A reading of the *Carmel Area Land Use Plan*, as a whole, along with the record approving it outlined above, supports retaining the Highlands Inn as publicly available overnight accommodations. The focus of the document preparers and the Commission was on

trying to accommodate even more visitors given the various constraints, acknowledging that all demand could not, nor necessarily should, be satisfied. To allow a significant erosion of existing visitor opportunities, beyond what was specifically allowed for in the *Plan* (e.g., that Mission Ranch could convert to residential use), would be antithetical to the goals of the *Plan*.

(4) Conclusion

In conclusion, a substantial issue is raised because the County has not convincingly made the case that there will be no impact on the stock of hotel and other visitor accommodations for stays of less than one week within the planning area nor that proposed timeshare is consistent with the goals of the *Carmel Area Land Use Plan*. While recognizing the quasi-visitor-serving nature of the proposed timeshare (and noting that if not sold or committed to members, they would be available to the general public), the Commission finds that the proposal constitutes a significant diminution of available units (107) to the general travelling public. More important, given the unique value of the Highlands Inn and its place in the Carmel Area, the project would significantly, adversely impact the stock of hotel and other visitor accommodations for stays of less than one week within the planning area and is not consistent with the goals of the *Carmel Area Land Use Plan* and section 20.64.110G(2)(e) and 20.64.110H(2) and (5).

e. De Novo Coastal Permit Findings

Because the Coastal Commission finds substantial issue with the County permit approval, it assumes *de novo* authority with respect to the coastal development permit. Further, the Coastal Commission hereby denies a coastal permit for the subdivision, condominiums, and timeshares components, **incorporating the above substantial issue findings by reference**, because the proposal is inconsistent with Monterey County Coastal Implementation Plan Section 20.64.110 and the goals of the Carmel Area Land Use Plan. The effect of the denial will be that the Highlands Inn remains a hotel. The proposed infrastructure improvements can occur if it remains a hotel and are approved for the reasons stated in the second finding below.

The County action actually involved four separate coastal permit components. The first three are related to the timeshare proposal and are sequential: a (re)subdivision to create nine lots ranging in size from .25 to 1.59 acres; conversion of 143 hotel units to condominium units; conversion of 143 condominiums to timeshare units.

Regarding the latter proposal to convert to timeshare, as noted in the substantial issue findings and incorporated by reference, the County has not convincingly made the case that there will be no impact on the stock of hotel and other visitor serving accommodations for stays of less than one week within the planning area. Rather, the evidence presented above shows that there will be an adverse impact. The amount of

units available to the visiting public will significantly decline and the likelihood of any new compensatory units being constructed in the future is very low. Furthermore, the Highlands Inn is in itself a unique visitor attraction that can not be replaced. There are not even any comparable sites designated for future visitor-serving uses. The Commission can not fathom any alternative timeshare proposals for the Highlands Inn that would allow the relevant findings to be made. Thus, the coastal permit for timeshare conversion must be denied as being inconsistent with Section 20.64.110 of the *County Coastal Implementation Plan*.

Regarding the condominium proposal on its own merit, a group of 143 or less individual owners could agree to run their facility as a visitor facility. But, this could prove complicated and could lead to conversions to quasi- or complete residential use in the future. Also, they would likely want to make some use of the units themselves. The Commission has considered such proposals as timeshares in the past and Section 20.64.110 would also be applicable. Most often condominiums are used for and considered residences. Although, most Highlands Inn units are very small for permanent residences (i.e., 336 and 616 square feet), still residential use is not allowed in the Visitor Serving Zone District. Finally, approval of the condominiums requires variance findings of "hardship" as to minimum lot size (10,000 square feet in the VSC(CZ) district) for which there is a lack of evidence. Thus, the coastal permit for condominium conversion must also be denied as being inconsistent with Section 20.64.110 of the *County Coastal Implementation Plan* as well as Section 20.78.040 regarding variances, Section 20.124.030 regarding allowable uses in "Visitor Serving" designations, and corresponding *Land Use Plan* Section 4.5.C. Finally, although it is arguable whether the proposal is consistent with Land Use Plan Section 4.4.3.D.2 concerning the protection of moderate and low-cost visitor-serving uses, the proposal is inconsistent with the public access policies of the Coastal Act because of its significant impact on the public availability of an important visitor-serving amenity in the Carmel Area.

Regarding the subdivision proposal on its own, currently there are six lots. Four contain visitor units; one contains the wastewater plant, and one has some parking. Under the proposed subdivision, six of the nine lots would contain visitor units, one would contain the lodge (lobby, restaurants, gift shop), one a parking lot, and one some land on the opposite side of Highlands Drive housing the wastewater plant (see Exhibit 3). According to the applicant, the intent of the request is "to follow road alignments, building locations, and to separate timeshare common area from the hotel buildings which are not part of the timeshare "common area." One parcel line would be adjusted so that it no longer bisects a building. Separate parcels can result in separate ownerships. Separate ownerships of common facilities can be complicated. It makes more sense for the owner of a hotel to also own the hotel's parking lot, treatment plant, lobby, etc. If there were multiple owners of the six inn unit parcels, their relationship(s) among themselves and to the owners of the parcels with the wastewater plants and hotel lobby with regards to responsibilities could be complicated. Although six legal parcels already exist, approving any additional parcelization would be contrary to the rest of the Commission's action on this proposal with its intent to have the Highlands Inn

retained as a hotel open to the general public. Therefore, the coastal permit for the subdivision is denied as being inconsistent with the aforementioned *Land Use Plan* visitor-serving goals and policies. A better option would be to recombine the six parcels into one. If six parcels were to be maintained, a simple lot line adjustment of the ones bisecting buildings should be requested

2. Intensity of Use

a. Appellant's Contentions:

Appellants Tydings and James contend that the project will result in an intensification of use beyond the equivalent of the 150 hotel unit maximum stated in the local coastal program. They base this contention on applicant-provided information of an average of 2.2 persons currently staying in each unit of the Highlands Inn and a unit occupancy rate of 80%. They then look at figures from other sources for timeshare occupancies noting expected occupancies per unit of from 3.2 to 3.8 people on the average and unit occupancy rates up to 90%. They present a table of future occupancy scenarios ranging from 63% to 94% higher than current occupancy levels.

With regard to **wastewater**, appellants Tydings and James contend:

The effects of the wastewater discharge on the marine environment are not minimized as required by the local coastal program.

They support their contention with information showing that Regional Water Quality Control Board wastewater discharge standards have been exceeded in the past. They also present evidence of apparently recently polluted water running off of the Highlands Inn property.

With regard to **parking**, appellants Tydings and James contend that the project will not provide the number of parking spaces required by the local coastal program. They present information claiming inadequate clearance for emergency vehicles, space sizes below County standards for even compact cars, parking space usurpation of space used and needed for trash, etc, insufficient spaces for peak periods, and unfeasibility of the alternatives making use of shuttles.

b. Local Government Action:

The County found that the likely occupancy of the units would be three people and one would likely be a child. This was based on a review of other timeshare occupancy patterns and the sizes (primarily one-bedroom) of the Highlands Inn units.

With regard to **wastewater**, the coastal permit approval includes an upgrade of the existing treatment facility from secondary to tertiary and allows some landscaping irrigation. The permit is conditioned for installation of backflow devices (#16), wastewater irrigation to meet the State Health regulations (#17), evidence of an amended RWQCB Discharge Permit (#18), compliance with County Code [Chapter] 15.23 (#19), compliance with State Health and Waste standards (#20), annexation to a county service area or dedicated to a public utility (#21), an application to the State Department of Health Services for water reclamation (#22), a wastewater engineering report (#23), specific locations where irrigation with reclaimed water is to occur (#24), compliance with County Code Chapter 18.44 Water Conservation (#34), and some runoff diverting to the wastewater plant (#53).

Findings for approval quote from the certified *Environmental Impact Report*:

Increase in wastewater discharge resulting from the timeshare component for the proposed project will not result in the need for additional wastewater discharge capacity for the project site or additional wastewater utilities. The project is anticipated to have no adverse impact on water quality, including but not limited to temperature, dissolved oxygen, or turbidity. The project will create a benefit [beneficial?] impact by increasing the quality of the wastewater effluent...

With regard to **parking**, the County approval is for an additional 15 parking spaces (in addition to the 306 which currently exist). The permit is further conditioned upon annual submittal of a parking and traffic management plan which shall include methods to provide sufficient parking during events and a monitoring program (#10) and allocation of sufficient spaces for the guestrooms (#11). The permit is also conditioned for a review of the parking layout and circulation by the Director of Public Works and meeting the standards of Title 20 and approval by the Planning Director (#32). Also use of a shuttle service is encouraged (#44).

c. Relevant Local Coastal Program Provisions

Policy 4.4.3D4 of the *Carmel Area Land Use Plan* states in part:

Maximum intensity for "Recreation and Visitor-Serving" sites not specified elsewhere in the Plan are as follows:

...150 visitor units and 12 employee units for Highlands Inn.

With regard to **wastewater**, *Carmel Area Land Use Plan* policy 2.4.4.B7 states:

The Regional Water Quality Control Board shall review the National Pollution Discharge Elimination System permits for existing private commercial sanitary systems (i.e., package treatment plants). A least four times a year RWQCB shall

undertake inspections of discharge effluent from existing and any new private sanitary system in the Carmel area in order to monitor water quality impacts...

Also, *Carmel Area Land Use Plan* policy 2.4.4.B8 states:

All new and/or expanding wastewater discharges into the coastal waters of Monterey County shall require a permit from the Health Department. Applicants for such permits shall be required to submit, at a minimum the following information and studies:

A Three years monitoring records...

This latter provision is repeated as Section 20.146.050.E.2 in the Monterey County *Coastal Implementation Plan*.

Chapter 18.44 of the Coastal Implementation Plan requires installation of water conservation devices at the time of ownership change.

Chapter 15.23 of the County Code, "Sewage Treatment and Reclamation Facilities" adopted in 1991 is incorporated by reference in the *Coastal Implementation Plan* but is not part of the certified text that the Commission reviews.

With regard to **parking**, Section 20.58.040 of the *Coastal Implementation Plan* requires 1 space per unit; 2 spaces per 3 employees; 1 space per four restaurant seats; and 20 spaces per 100 square feet of meeting space.

d. Substantial Issue Analysis and Conclusion

The appellants' contentions are based on their belief that the project will result in an intensification of use. The resulting intensification of use is not as great as they predict and it is acceptable under the local coastal program.

There is evidence in the County record refuting the appellants' contentions of unit occupancy above an average of three persons per unit. This is largely based on the sizes of the units and the amount of beds in them. The size breakdowns are such that they would not physically accommodate more than two or three people:

- one-bedroom units of approximately 616 square feet;
- studio units of approximately 336 square feet;
- only 4 two-bedroom units of approximately 850 square feet.

Currently, unit occupancy rates are 80%. Information in the County record indicates that much higher rates are not likely. Thus, under most likely scenarios, total occupancy would increase somewhat after the timeshare conversion, but not as much as the appellants project.

The appellants' contention is based on a faulty premise: that is, equating one allowable visitor-serving unit to its historic occupancy level. Put another way, the appellants believe if occupancy increases above historic levels, then the units involved equate to greater than single visitor-units. The cap on the number of visitor-serving units at Highlands Inn is 150. There are currently 143 units. Thus, under the appellants' contentions, an occupancy increase of more than 5% over historic levels would be inconsistent with the allowed maximum. There is no evidence to support this line of reasoning. There are no provisions in the local coastal program which equate visitor units with a less than 100% occupancy. A review of the background to the local coastal program and to the staff report for approval does not reveal any indication that the maximums shown in the local coastal program were predicated on a certain occupancy rate other than 100%. In approving the permit to expand to 143 rooms from 105, the Commission did not discuss less than 100% occupancy as any mitigating circumstance (i.e., the Commission did not assert that it could approve 143 units only because it was known that not all would be always occupied).

Currently, and as would remain under the permit, there would be 143 units. There is no change in the physical number of units, which is key. In fact while the Commission does not support this timeshare conversion for the reasons listed above, it has no objection to any increased occupancy per se. Increased occupancy is only a problem if it entails adverse impacts. Then, the tests under Section 20.64.110H might not be met. But with the two issues that the appellants are most concerned about -- wastewater and parking -- the proposal will lessen impacts.. Therefore, no substantial issue is raised by this contention, because the *Land Use Plan's* cap on the number of units is not exceeded.

With specific regard to **wastewater** impacts, the appellants' contentions are not supported. This project would benefit the marine environment in two ways. First, the treatment level would be upgraded to "tertiary," This is a very high level of treatment; higher than currently exists at Highlands Inn and higher than the municipal discharges into Monterey Bay. According to information in the *EIR* 50 to 75 % of the wastewater will receive this higher treatment. Some of this tertiary-treated flow will be recycled. The remainder will be blended with the secondary treated flows for ocean disposal. Second, some of the treated water would be reclaimed and not discharged into the ocean; again reducing any wastewater discharge impacts. Given that this is not a new nor expanded discharge, it does not fall under the criteria of *Land Use Plan* policies for extra testing. The Regional Water Quality Control Board is responsible for ensuring compliance with wastewater discharge requirements. If, as appellants contend, these requirements are not currently being met, complaints are appropriately directed the enforcement staff at the Regional Board. Thus the timeshare conversion is not really relevant, except with regard to future responsibility to provide wastewater service, which is now the responsibility of the single hotel owner. The permit is conditioned for the Highlands Inn to be annexed into a County Service District or Area or a public utility for purposes of wastewater collection and treatment (condition #21). This would relieve the multitude of individual timeshare owners from direct responsibility to operate the

treatment plant. Furthermore, as enumerated, the County has placed numerous other conditions on the wastewater aspects of this project to ensure compliance with local and state regulations. Additionally, it has addressed the runoff concerns of the appellants (the runoff may or may not be sewage) by requiring some runoff to be treated. Thus, no substantial issue is raised by this contention. The Commission urges the Highlands Inn owners to comply with all water quality requirements and to make the proposed wastewater improvements (see finding e below).

With regard to **parking**, the appellants' contentions do not give rise to a substantial issue, either. The evidence presented indicates that the project is consistent with the County Code requirements. The following calculations were presented:

142 rooms x	1 per room =	142 spaces
60 employees x	2/3 per employee =	40
220 restaurant seats x	1/4 per seat =	55
4140 sq. ft. meeting space x 1 per 50 sq. ft. =		<u>83</u>
Total		320 spaces needed.

(Note: there are actually 143 rooms, so the total requirement is for 321 spaces, which is the number being provided.) Although the conditions leave final parking plan sign-offs to County staff, the record contains considerable detail as to how the applicant will comply, demonstrating feasibility (see Exhibit 3). According to Associated Transportation Engineers, the satisfactory operation of the parking for the project site is dependent upon a rigorous valet parking program. The use of tandem, valet parking and shuttles could be cause for some concern, but this is a matter of local, not statewide, significance. If there is any lack of parking it will not impact visitors to the area. The neighborhood streets that would be subject to overflow parking do not provide access to the shoreline; they are narrow, winding streets inland of Highway One. Given the sensitive setting, undertaking measures that minimize paving such as valet and tandem parking, are worthy. County responses in the permit file indicate that the compact spaces are adequate and the valet parking need not comply with parking space size standards. Additionally, trash facilities are being relocated out of the area needed for parking, and adequate emergency corridors are provided. As designed and as conditioned, the coastal permit adequately addresses parking and, therefore, no substantial issue is raised by the appellants' contentions. Again the Commission urges the Highlands Inn owners to undertake the proposed parking improvements (see finding e below).

e. De Novo Coastal Permit Findings

1. Conditioned Approval of Infrastructure Improvements as Consistent with the Local Coastal Program

One component of the County coastal permit to the Highland Inn is "to realign and add parking spaces, new underground water tanks, upgrade the existing wastewater

treatment facility from secondary to tertiary treatment; allow reclamation of a portion of the tertiary effluent for landscaping and irrigation and a recycling system for an on-site laundry facility.” These improvements are consistent with all local coastal program policies. They would be a welcome addition to the current facility, even as it would stay a hotel under this decision.

Several conditions imposed by the County relate to these improvements. They are consistent with and made necessary by the relevant portions of the local coastal program cited in the above findings and in portions of County’s findings #18 and 20, which are adopted by reference (see Exhibit 2). These conditions are # 8, 10, 11, and 32 (with regard to parking); # 16 (for water); and # 17, 18, 19, 20, 22, 23, 24, 34, and 53 (for wastewater). The wording in several of these conditions needs revision to delete the reference to filing the condominium map, since the Commission denies the condominium conversion component of the project. Most of these conditions note the County and/or State regulations that they are based on. As conditioned to retain these County conditions, the proposed project is consistent with the Monterey County Local Coastal Program.

2. California Environmental Quality Act

A Negative Declaration and a focused environmental impact report were prepared for this project. No adverse impacts from the proposed infrastructure improvements were found and the Commission finds none as well. In fact, these improvements would benefit the environment. Thus, the project, as conditioned satisfies California Environmental Quality Act requirements.